IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1230 of 2004

Shri Ramcahdnra Dnyanu Shedge
and Ors. .. ... Appellants

V/s

Balkrishna Bapurao Shedge
and Ors. ... Respondents

Shri P.B.Shah for Appellants
Shri P.V.Samant for Respondent nos.1 to 7

CORAM:S.R.SATHE,J.

DATED:19th July 2007

P.C.:-

1. Heard both sides.

2. Perused the papers and judgment of the trial Court as well as first appellate Court.

3. The Appellant original plaintiff filed suit for specific performance of the agreement against the defendants whereby the defendants have agreed to reconvey the suit property to the plaintiff. The trial Court decreed the suit. Being aggrieved the defendants

preferred First Appeal No.225 of 2000. The learned Additional District Judge held that the plaintiff has proved that Chandrabhaga Shedge has executed agreement of reconveyance on 17-5-1971. He however held that the plaintiff has failed to prove readiness and willingness. The first Appellate Court also observed that merely because the agreement is lawful specific performance cannot be granted considering the fact that plaintiff filed the suit 24 years after the agreement. He therefore allowed the appeal and dismissed the suit.

4. Shri P.B.Shah, learned Advocate for the appellant strenuously argued before me that as the agreement is held valid the learned first Appellate Court ought to have granted the decree for specific performance.

5. From perusal of the record it appears that there was in fact no justifiable reason for the plaintiff for not filing the suit during the period of 24 years. No doubt, he has given a ground that few days prior to filing of the suit when he was cleaning the loft he found the agreement in question at the said place and as such there was delay. The reason given by the plaintiff is rightly not accepted by the learned Additional District Judge. It was difficult to believe that during 24 years plaintiff had no occasion to see the loft of his own house.

6. Hence having regard to all the facts and

circumstances of the case the learned Additional District Judge rejected the plaintiff's claim by using discretion under Section 20(2)(b) of Specific Reliefs Act.

7. In my considered view it cannot be said that the discretion was used arbitrary or without applying mind to the facts of the case. Nor it can be said that the learned Additional District Judge has not used the discretion judiciously. Hence there is no substantial question of law involved in the appeal. Hence the appeal is dismissed in limine.

(S.R.SATHE,J.)